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26 Attorneys for Defendant/Counterclaimant
27 TOMTOM, INC.

28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

SILVER STATE INTELLECTUAL
TECHNOLOGIES, INC., a Nevada
corporation,
Plaintiff/Counterdefendant,
v.
TOMTOM, INC., a Massachusetts
corporation,
Defendant/Counterclaimant.)
Case No. 2:11-cv-1581-PMP-PAL
STIPULATED PROTECTIVE
ORDER

1 The Court recognizes that at least some of the documents and information
2 ("materials") being sought through discovery in the above-captioned action are, for
3 competitive reasons, normally kept confidential by the parties. The parties have agreed to be
4 bound by the terms of this Protective Order ("Order") in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

DEFINITIONS

11 1. The term “Confidential Information” will mean and include information
12 contained or disclosed in any materials, including documents, portions of documents, answers
13 to interrogatories, responses to requests for admissions, trial testimony, deposition testimony,
14 and transcripts of trial testimony and depositions, including data, summaries, and
15 compilations derived therefrom that is deemed to be Confidential Information by any party to
16 which it belongs. The persons receiving Confidential Information are ENJOINED from
17 disclosing it to any other person or entity except in conformance with this Order.

18 2. The term "materials" will include, but is not be limited to: documents;
19 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
20 material that identify customers or potential customers; price lists or schedules or other matter
21 identifying pricing; minutes; telegrams; letters; statements; cancelled checks; contracts;
22 invoices; drafts; books of account; worksheets; notes of conversations; desk diaries;
23 appointment books; expense accounts; recordings; photographs; motion pictures;
24 compilations from which information can be obtained and translated into reasonably usable
25 form through detection devices; sketches; drawings; notes (including laboratory notebooks
26 and records); reports; instructions; disclosures; other writings; models and prototypes and
27 other physical objects.

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3. The term "Counsel" will mean outside counsel of record, and other attorneys,
paralegals, secretaries, and other support staff employed in the law firms identified below:

3 Knobbe, Martens, Olson & Bear, LLP; McDonald Carano Wilson, LLP; Wiley Rein
4 LLP; Origin, Ltd., and Jones Vargas LLP. "Counsel" also includes James Joy, the General
5 Counsel of TomTom; Ann Critchell-Ward, TomTom's Vice President of Intellectual
6 Property; and Peter Spours, TomTom's Director of IP Strategy & Transactions.

GENERAL RULES

8 4. Each party to this litigation that produces or discloses any materials, answers
9 to interrogatories, responses to requests for admission, trial testimony, deposition testimony,
10 and transcripts of trial testimony and depositions, or information that the producing party
11 believes should be subject to this Protective Order may designate the same as
12 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

13 a. Designation as “CONFIDENTIAL”: Any party may designate
14 information as “CONFIDENTIAL” only if, in the good faith belief of such
15 party and its counsel, the unrestricted disclosure of such information (a) may
16 have the effect of causing harm to the competitive position of the person, firm,
17 partnership, corporation, or to the organization from which the information
18 was obtained, or (b) would violate an obligation of confidentiality to a third
19 party, including a court.

20 b. Designation as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY”:
21 Any party may designate information as “CONFIDENTIAL - ATTORNEYS’
22 EYES ONLY” only if, in the good faith belief of such party and its counsel,
23 the information is among that considered to be most sensitive by the party,
24 including but not limited to trade secret or other confidential research,
25 development, financial or other commercial information.

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1 c. Confidential documents shall be so designated by stamping copies of
2 the document produced to a party with the legend "CONFIDENTIAL" or
3 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" on each page of the
4 document, preferably in the lower right-hand corner of the document, or as
5 close thereto as feasible. In the event that only selected pages of a bound
6 multiple-page document are stamped with the "CONFIDENTIAL" or
7 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" legend (e.g., responses to
8 discovery requests), the first page of the bound document shall also be
9 stamped with the "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS'
10 EYES ONLY" legend to prevent accidental disclosure of the Confidential
11 contents of the document.

12 5. In the event the producing party elects to produce materials for inspection, no
13 marking need be made by the producing party in advance of the initial inspection. For
14 purposes of the initial inspection, all materials produced will be considered as
15 "CONFIDENTIAL - ATTORNEYS' EYES ONLY," and must be treated as such pursuant to
16 the terms of this Order. No copies shall be made or retained during the inspection.
17 Thereafter, upon selection of specified materials for copying by the inspecting party, the
18 producing party must, within a reasonable time prior to producing those materials to the
19 inspecting party, mark the copies of those materials that contain Confidential Information
20 with the appropriate confidentiality marking. Any document identified on a privilege log may
21 be withheld by the producing party, and its inclusion in the documents for inspection shall not
22 be deemed a waiver of any privilege.

23 6. Whenever a deposition taken on behalf of any party involves a disclosure of
24 Confidential Information of any party:

25 a. the deposition or portions of the deposition must be designated as
26 containing Confidential Information subject to the provisions of this Order;
27 such designation must be made on the record whenever possible, but a party
28 may designate portions of depositions as containing Confidential Information

1 after transcription of the proceedings; a party will have until fourteen (14) days
2 after receipt of the deposition transcript to inform the other party or parties to
3 the action of the portions of the transcript to be designated
4 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

5 b. the disclosing party will have the right to exclude from attendance at
6 the deposition, during such time as the Confidential Information is to be
7 disclosed, any person other than the deponent, Counsel (including their staff
8 and associates), the court reporter, and the person(s) agreed upon pursuant to
9 paragraph 8 below; and

10 c. the originals of the deposition transcripts and all copies of the
11 deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL -
12 ATTORNEYS’ EYES ONLY,” as appropriate, and the original or any copy
13 ultimately presented to a court for filing must not be filed unless it can be
14 accomplished under seal, identified as being subject to this Order, and
15 protected from being opened except by order of this Court.

16 7. All Confidential Information designated as “CONFIDENTIAL” or
17 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” must not be disclosed by the receiving
18 party to anyone other than those persons designated within this order and must be handled in
19 the manner set forth below and, in any event, must not be used for any purpose other than in
20 connection with this litigation, unless and until such designation is removed either by
21 agreement of the parties, or by order of the Court.

22 8. Information designated “CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
23 must be viewed only by:

- 24 a. Counsel (as defined in paragraph 3) of the receiving party;
25 b. Independent experts or consultants under the conditions set forth in this
26 Paragraph;
27 c. Court reporters employed by any party in this action;

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- 1 d. Judges, law clerks, court reporters, and other clerical personnel of the
- 2 Court before which this action is pending;
- 3 e. Stenographic and clerical employees associated with the individuals
- 4 identified above; and
- 5 f. Any other person as to whom the parties in writing agree.

6 The right of any independent expert or consultant to receive any Confidential
7 Information will be subject to the advance approval of such expert or consultant by the
8 producing party or by permission of the Court. The party seeking approval of an independent
9 expert or consultant must provide the producing party with the name and curriculum vitae of
10 the proposed independent expert or consultant, and an executed copy of the form attached
11 hereto as Exhibit A, in advance of providing any Confidential Information of the producing
12 party to the expert or consultant. In addition, the party seeking approval must include in its
13 written notice to opposing counsel an informed statement whether the independent expert or
14 consultant has presently or has had in the past a consulting relationship, or any other kind of
15 contractual or employment relationship, with either (i) the party receiving the Confidential
16 Information, or (ii) any company that manufactures or develops navigation devices.

17 Any objection by the producing party to an independent expert or consultant receiving
18 Confidential Information must be made in writing within fourteen (14) days following receipt
19 of the identification of the proposed expert or consultant. Confidential Information may be
20 disclosed to an independent expert or consultant if the fourteen (14) day period has passed
21 and no objection has been made. The approval of independent experts or consultants must not
22 be unreasonably withheld. In the event that the producing party objects in writing to the
23 proposed disclosure during the above-stated fourteen-day period, and the parties are unable to
24 agree whether the disclosure should be made, the party seeking disclosure must move the Court
25 for permission to disclose the Confidential Information. The objecting party shall provide the
26 grounds for such objection in writing within the above-stated fourteen-day period, articulating
27 those grounds with sufficient particularity to enable the party seeking disclosure to move the
28 Court for permission to disclose the Confidential Information. The objecting party's grounds for

1 objection to the proposed disclosure must include good cause for the objection based, at least in
2 part, on a claim of prejudice if the proposed disclosure is made. No Confidential Information
3 shall be disclosed to an independent expert or consultant until any objections to the proposed
4 disclosure of that material have been resolved by the parties or the Court.

5 Opposing counsel agree that they will not depose or interview such expert or
6 consultant until and unless the expert is designated as a testifying expert by the party
7 proposing the disclosure, and that such designation must be timely made in accordance with
8 the applicable rules of procedure; provided, however, that nothing herein shall prevent a party
9 from seeking leave of Court to depose or interview such expert.

10 9. Information designated "CONFIDENTIAL" must be viewed only by the
11 persons authorized pursuant to the terms of paragraph 8, and by the additional individuals
12 listed below, provided each such individual has read this Order in advance of disclosure and
13 has agreed in writing to be bound by its terms:

14 a. Executives who are required to participate in policy decisions with
15 reference to this action;

16 b. Technical personnel of the parties with whom Counsel for the parties
17 find it necessary to consult, in the discretion of such Counsel, in preparation
18 for trial of this action; and

19 c. Stenographic and clerical employees associated with the individuals
20 identified above.

21 10. With respect to material designated "CONFIDENTIAL" or
22 "CONFIDENTIAL - ATTORNEYS' EYES ONLY," any person indicated on the face of the
23 document to be its originator, author or a recipient of a copy of the document, may be shown
24 the same.

25 11. All information which has been designated as "CONFIDENTIAL" or
26 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" by the producing or disclosing party,
27 and any and all reproductions of that information, must be retained in the custody of the
28 Counsel for the receiving party identified in paragraph 3, except that independent experts

1 authorized to view such information under the terms of this Order may retain custody of
2 copies such as are necessary for their participation in this litigation.

3 12. Before any materials produced in discovery, answers to interrogatories,
4 responses to requests for admissions, deposition transcripts, or other documents which are
5 designated as Confidential Information are filed with the Court for any purpose, the party
6 seeking to file such material must seek permission of the Court to file the material under seal.

7 13. At any stage of these proceedings, any party may object to a designation of the
8 materials as Confidential Information. If any such objection is made, the parties shall first
9 attempt to resolve any such dispute in good faith on an informal basis:

10 a. The party challenging the designation shall provide to the producing
11 party written notice of the disagreement, specifically identifying the
12 Confidential Information in dispute and articulating the challenging party's
13 basis for its challenge of the confidentiality designation.

14 b. The producing party shall respond in writing to the challenging party's
15 notice within seven (7) calendar days, articulating the basis for the producing
16 party's designation with sufficient particularity to enable the challenging party
17 to move the Court for permission to disclose the Confidential Information.

18 c. If the dispute cannot be resolved between the parties without
19 intervention from the Court, the party challenging the confidentiality
20 designation may move the Court requesting appropriate relief. In any such
21 question brought before the Court, the party asserting the confidentiality
22 designation shall bear the burden of proving by clear and convincing evidence
23 that the information should be maintained at the confidentiality level
24 designated by the producing party.

25 The materials at issue must be treated as Confidential Information, as designated by
26 the designating party, until the Court has ruled on the objection or the matter has been
27 otherwise resolved.

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1 14. All Confidential Information must be held in confidence by those inspecting or
2 receiving it, and must be used only for purposes of this action. Counsel for each party, and
3 each person receiving Confidential Information must take reasonable precautions to prevent
4 the unauthorized or inadvertent disclosure of such information. If Confidential Information is
5 disclosed to any person other than a person authorized by this Order, the party responsible for
6 the unauthorized disclosure must immediately bring all pertinent facts relating to the
7 unauthorized disclosure to the attention of the other parties and, without prejudice to any
8 rights and remedies of the other parties, make every effort to prevent further disclosure by the
9 party and by the person(s) receiving the unauthorized disclosure.

10 15. No party will be responsible to another party for disclosure of Confidential
11 Information under this Order if the information in question is not labeled or otherwise
12 identified as such in accordance with this Order.

13 16. If a party, through inadvertence, produces any Confidential Information
14 without labeling or marking or otherwise designating it as such in accordance with this Order,
15 the designating party may give written notice to the receiving party that the document or
16 thing produced is deemed Confidential Information, and that the document or thing produced
17 should be treated as such in accordance with that designation under this Order. The receiving
18 party must treat the materials as confidential, once the designating party so notifies the
19 receiving party. If the receiving party has disclosed the materials before receiving the
20 designation, the receiving party must notify the designating party in writing of each such
21 disclosure. Counsel for the parties will agree on a mutually acceptable manner of labeling or
22 marking the inadvertently produced materials as "CONFIDENTIAL" or "CONFIDENTIAL -
23 ATTORNEYS' EYES ONLY."

24 17. Nothing within this order will prejudice the right of any party to object to the
25 production of any discovery material on the grounds that the material is protected as
26 privileged or as attorney work product.

27 18. Nothing in this Order will bar Counsel from rendering advice to their clients
28 with respect to this litigation and, in the course thereof, relying upon any information

1 designated as Confidential Information, provided that the contents of the information must
2 not be disclosed.

3 19. This Order will be without prejudice to the right of any party to oppose
4 production of any information for lack of relevance or any other ground other than the mere
5 presence of Confidential Information. The existence of this Order must not be used by either
6 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
7 Procedure.

8 20. Nothing within this order will be construed to prevent disclosure of
9 Confidential Information if such disclosure is required by law or by order of the Court.
10 Further, nothing herein shall preclude a party from having Confidential Information copied,
11 reproduced, or adapted by an outside professional copying, reproduction, or demonstrative
12 exhibit preparation service, provided that such service and the party using such service take
13 all steps reasonably available to protect the confidentiality of such material.

14 21. Third party witnesses may invoke all of the provisions of this Order which are
15 available to the parties. This provision does not abridge a third party's right to seek to quash
16 any subpoena served on it, or to seek to protect information sought by a party, either on the
17 third party's own motion or on a motion brought on its behalf by an objecting party. The
18 party seeking production from a third party witness who may possess Confidential
19 Information of the other party shall have the duty to provide a copy of this Order to that third
20 party witness prior to any production from that witness. The party seeking production shall
21 also have the duty to inform that third party witness of its rights under this Order and its
22 ability to designate any material it produces as Confidential Information. In addition, the
23 parties shall treat the Confidential Information of third parties in accordance with the terms of
24 this Order.

25 22. Persons who access Confidential Information of TomTom shall not, for a
26 period of one (1) year following final resolution of this action, draft or revise patent claims,
27 supervise, or assist in the prosecution of any patent application relating to the technology at
28 issue in this litigation. The parties expressly agree that the Prosecution Bar set forth herein

1 shall be personal to any attorney who reviews Confidential Information of TomTom and shall
2 not be imputed to any other persons or attorneys at the attorney's law firm or company unless
3 information concerning that designated information was communicated to an individual by
4 one who reviewed such designated information. However, an individual that does not receive
5 Confidential Information shall not be supervised by, or receive instructions regarding the
6 prosecution of patent claims from, individuals receiving Confidential Information under this
7 Protective Order. Nothing in this paragraph shall operate to preclude any such person from
8 fulfilling and/or assisting in the fulfillment of any prior art disclosure obligations to the
9 United States Patent and Trademark Office that may arise as a consequence of knowledge
10 obtained during the course of this litigation. The foregoing Prosecution Bar shall not bar
11 litigation counsel from participating in any reexamination proceeding with respect to any
12 patent relating to the technology at issue in this litigation, however, litigation counsel
13 participating in any reexamination proceeding may not use for any purpose during any
14 reexamination proceeding any Confidential Information obtained in this litigation.

15 23. The inadvertent production in the course of discovery of any document or
16 information, whether designated as Confidential Information or not, shall not be deemed to
17 waive any attorney-client privilege, work product protection, or any other privilege or
18 immunity that would otherwise attach to the document or information produced as long as the
19 producing party, promptly after discovery of such inadvertent production, notifies the
20 receiving party of the claim of privilege or other protection or immunity. The producing
21 party must notify the receiving party and request return or destruction of such documents,
22 things, materials, or information, and provide a privilege log of such documents, things,
23 materials, or information. The receiving party must within five (5) business days of such
24 request return or destroy and confirm destruction of all such documents, things, materials, or
25 information, and any copies thereof, as well as all notes or other work product reflecting the
26 contents of such materials and all such returned or destroyed material shall be deleted from
27 any litigation-support or other database; but doing so shall not preclude the receiving party
28 from seeking to compel production of those materials, nor constitute an admission that the

1 materials were, in fact, privileged, and the producing party must preserve any such
2 documents. The fact of an inadvertent production shall not be a basis for arguing waiver of
3 attorney-client privilege or work-product protection.

4 24. Upon final termination of this action, including any and all appeals, Counsel
5 for each party must, upon request of the producing party, return all Confidential Information
6 to the party that produced the information, including any copies, excerpts, and summaries of
7 that information, or must destroy same at the option of the receiving party, and must purge all
8 such information from all machine-readable media on which it resides. Notwithstanding the
9 foregoing, Counsel for each party may retain all pleadings, briefs, memoranda, motions, and
10 other documents filed with the Court that refer to or incorporate Confidential Information,
11 and will continue to be bound by this Order with respect to all such retained information.
12 Further, attorney work product materials that contain Confidential Information need not be
13 destroyed, but, if they are not destroyed, the person in possession of the attorney work
14 product will continue to be bound by this Order with respect to all such retained information.

15 25. The restrictions and obligations set forth within this order will not apply to any
16 information that: (a) the parties agree should not be designated Confidential Information; (b)
17 the parties agree, or the Court rules, is already public knowledge; (c) the parties agree, or the
18 Court rules, has become public knowledge other than as a result of disclosure by the receiving
19 party, its employees, or its agents in violation of this Order; or (d) has come or will come into
20 the receiving party's legitimate knowledge independently of the production by the
21 designating party. Prior knowledge must be established by pre-production documentation.

22 26. The restrictions and obligations within this Order will not be deemed to
23 prohibit discussions of any Confidential Information with anyone if that person already has or
24 obtains legitimate possession of that information.

25 27. Transmission by email or facsimile is acceptable for all notification purposes
26 within this order.

27 28. This Order may be modified by agreement of the parties, subject to approval
28 by the Court.

1 29. The Court may modify the terms and conditions of this Order for good cause,
2 or in the interest of justice, or on its own order at any time in these proceedings. The parties
3 prefer that the Court provide them with notice of the Court's intent to modify the Order and
4 the content of those modifications, prior to entry of such an order.

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Respectfully submitted,

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KNOBBE, MARTENS, OLSON & BEAR, LLP

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Dated: March 5, 2012

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/s/Frederick S. Berretta

10

Brenton R. Babcock
Frederick S. Berretta
Phillip Bennett

11

12

McDONALD CARANO WILSON LLP
Andrew P. Gordon
Jeffrey A. Silvestri

13

14

Attorneys for Plaintiff/Counterdefendant
SILVER STATE INTELLECTUAL
TECHNOLOGIES, INC.

15

16

WILEY REIN LLP

17

18

Dated: March 5, 2012

/s/Brian H. Pandya (with permission)

19

20

James H. Wallace, Jr.
Brian H. Pandya

JONES VARGAS, LLP
Karl L. Nielson

21

22

Attorneys for Defendant/Counterclaimant
TOMTOM, INC.

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ORDER

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IT IS SO ORDERED:


UNITED STATES DISTRICT COURT JUDGE

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Dated: March 8, 2012

1 EXHIBIT A
2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE DISTRICT OF NEVADA
5

6 SILVER STATE INTELLECTUAL) Case No. 2:11-cv-1581-PMP-PAL
7 TECHNOLOGIES, INC., a Nevada)
corporation,)
Plaintiff/Counterdefendant,) **AGREEMENT TO BE BOUND BY**
v.) **PROTECTIVE ORDER**
TOMTOM, INC., a Massachusetts)
corporation,)
Defendant/Counterclaimant.)
11 _____)
12
13 I, _____, declare and say that:
14 1. I am employed as _____ by
15 _____.
16 2. I have read the Protective Order entered in Silver State Intellectual
17 Technologies, Inc. v. TomTom, Inc., Case No. 11cv1581 PMP-PAL, and have received a
18 copy of the Protective Order.
19 3. I promise that I will use any and all "Confidential" or "Confidential -
20 Attorneys' Eyes Only" information, as defined in the Protective Order, given to me only in a
21 manner authorized by the Protective Order, and only to assist Counsel in the litigation of this
22 matter.
23 4. I promise that I will not disclose or discuss such "Confidential" or
24 "Confidential – Attorneys' Eyes Only" information with anyone other than the persons
25 described in paragraphs 3, 8 and 9 of the Protective Order.
26 5. I acknowledge that, by signing this agreement, I am subjecting myself to the
27 jurisdiction of the United States District Court for the District of Nevada with respect to
28 enforcement of the Protective Order.

1 6. I understand that any disclosure or use of "Confidential" or "Confidential -
2 Attorneys' Eyes Only" information in any manner contrary to the provisions of the Protective
3 Order may subject me to sanctions for contempt of court.

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5 I declare under penalty of perjury that the foregoing is true and correct.

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7 Date: _____

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1 **PROOF OF SERVICE**

2 I hereby certify that on March 5, 2012, I caused the **STIPULATED PROTECTIVE**
3 **ORDER** to be electronically filed with the Clerk of the Court using the CM/ECF system
4 which will send electronic notification of such filing to the following person(s):

5 Karl L. Nielson
6 kln@jonesvargas.com
7 JONES VARGAS, LLP
8 3773 Howard Hughes Parkway,
9 Third Floor South
10 Las Vegas, NV 89169
11 Phone: (702) 862-3300

12 James Wallace
13 jwallace@wileyrein.com
14 Brian Pandya
15 bpandya@wileyrein.com
16 WILEY REIN LLP
17 1776 K Street, NW
18 Washington DC 20006
19 Phone: 202-719-7457

20 Executed on March 5, 2012, at San Diego, California.

21 
22 Megan Ptacin

23 12521359

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